

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10
11

12 ROSIE L. HALL,

13 Plaintiff,

CIV. S-04-0376 LKK PAN PS

14 v.

15 U.S. BANKRUPTCY COURT, U.S.
16 BANKRUPTCY APPELLATE PANEL,
17 JUDGE RUSSELL DAVIS, U.S.
TRUSTEE, JUDITH HOTZE, HELGA
A. WHITE, and ROBERT WEGNER,

FINDINGS AND RECOMMENDATIONS

18 Defendants.
19

—oOo—

20 On February 23, 2004, plaintiff Rosie L. Hall filed this
21 action. The named defendants are the U.S. Bankruptcy Court,
22 Judge Russell Davis, the U.S. Bankruptcy Appellate Panel, the
23 U.S. Trustee, Judith Hotze (attorney for the U.S. Trustee),
24 Robert Wenger (sued as Robert Wegner), and Helga A. White
25 (attorney for Wenger). Plaintiff alleges she filed a bankruptcy
26 petition October 13, 1993, that Robert Wenger was appointed

1 trustee of the assets of the estate, that he was unqualified, and
2 that his errors and omissions caused significant financial loss
3 to plaintiff.

4 The federal defendants, viz., the bankruptcy court,
5 bankruptcy appellate panel, Judge Russell, U.S. Trustee and
6 Judith Hotze, move to dismiss. Defendants contend that the
7 bankruptcy court and appellate panel, as arms of the federal
8 government, enjoy sovereign immunity from suit, that Judge
9 Russell enjoys absolute judicial immunity from suit for actions
10 taken in his official capacity, and that the U.S. Trustee and
11 Hotze share the federal government's sovereign immunity to suit
12 for acts taken in their official capacity and, because trustees
13 assumed judicial functions historically vested in bankruptcy and
14 district courts, enjoys judicial immunity for acts in their
15 individual capacity.

16 Plaintiff does not meaningfully oppose the federal
17 defendants' motion.

18 For the reasons urged by the federal defendants and
19 because plaintiff's complaint avers no wrongdoing by any of them,
20 all claims against the federal defendants should be dismissed.

21 Robert Wenger moves to dismiss upon the ground
22 plaintiff's claims against him are barred by any applicable
23 limitation period. He argues that plaintiff affirmatively
24 alleges that she filed her bankruptcy petition in October 1993,
25 that all of Wenger's alleged delicts occurred in 1994 and 1995,
26 and that her claims are barred by any limitation period that

1 might be applied.

2 In fact, plaintiff alleges wrongdoing by Wenger up to the
3 time she filed her complaint. Accordingly, Wenger's motion to
4 dismiss should be denied.

5 Nevertheless the court is skeptical that plaintiff has
6 alleged any facts that would justify relief against Wenger
7 because all of his actions as trustee necessarily would have been
8 approved by the bankruptcy court and any challenges decided in
9 that court. Accordingly, I recommend that Wenger be accorded 20
10 days within which to renew his motion to dismiss on different
11 grounds.

12 These findings and recommendations are submitted to the
13 Honorable Lawrence K. Karlton, the United States District Judge
14 assigned to this case. 28 U.S.C. § 636(b)(1). Written
15 objections may be filed within ten days after being served with
16 these findings and recommendations. The document should be
17 captioned "Objections to Magistrate Judge's Findings and
18 Recommendations." The failure to file objections within the
19 specified time may waive the right to appeal the District Court's
20 order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21 Dated: April 18, 2005.

22 /s/ Peter A. Nowinski

23 PETER A. NOWINSKI
24 Magistrate Judge
25
26